

REMARKS

Following the prior restriction requirement, Claims 16-19 and 26-29 were withdrawn from further consideration and Claims 1-15 and 20-25 have been examined. Of these, Claims 1-3 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite for the inclusion of the phrase "capable of" which allegedly renders the claims indefinite. Without agreeing as to the substance of this rejection, Claims 1-3 have been amended to more positively set forth the same recitation by now reciting the identification of aircraft that are able to perform the requested mission. Since Claims 1-3 no longer include the phrase "capable of" and, more generally, particularly point out and simply claim the subject matter regarded the invention, the rejection of Claims 1-3 under 35 U.S.C. § 112, second paragraph, is therefore overcome.

In responding to the indefiniteness rejection of Claims 1-3, it was also noted that the number of other claims included the phrase "capable of." As such, Claims 6-9 and 11-15 have also been amended to further recite that various executable portions and the processing element are configured to perform respective functions in order to further clarify the claimed invention.

The Official Action also rejected Claims 1-15 and 20-25 under 35 U.S.C. § 101 for being allegedly directed to non-statutory subject matter. In this regard, pages 3 and 4 of the Official Action explains this rejection by a discussion of the requirements for a method/process claim to be drawn to statutory subject matter in compliance with 35 U.S.C. § 101. However, it is noted at the outset that Claims 6-15 are not method or process claims. Instead, Claims 6-10 are computer program product claims and Claims 11-15 are system claims. As such, Claims 6-15 are clearly statutory with the computer program product of Claims 6-10 being an article of manufacture and Claims 11-15 being a system -- both of which being statutory subject matter pursuant to 35 U.S.C. § 101. Indeed, Claims 6-10 drawn to a computer program product are drafted in a form that is recognized as statutory by MPEP § 2106.01 (I) which states "a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory."

With respect to method Claims 1-5 and 20-25, it is noted that the Court of Appeals for the Federal Circuit has issued its decision in *In re Bilski*¹ which considered issues relating to statutory subject matter and method claims. In this regard, *In re Bilski* introduced a test which has become generally known as the “machine-or-transformation” test, with respect to the determination of whether a method claim is directed to statutory subject matter. In this regard, the *Bilski* court found that method claims that are tied to a particular machine or that transform an article into a different state or thing are statutory.

As such, independent Claims 1 and 20 have been amended to recite that various functions are performed with a processing element. With respect to independent Claim 1, for example, the relative states of readiness of a plurality of aircraft are automatically determined with a processing element. Additionally, maintenance information associated with a plurality of aircraft is automatically analyzed with a processing element. Further, a processing element is now described to identify aircraft and to provide respective measures of the relative states of readiness of the aircraft. Similarly, independent Claim 20 has been amended to recite that the relative states of readiness of the plurality of repairable systems are automatically determined with a processing element. Additionally, maintenance information associated with the plurality of repairable systems is analyzed with the processing element. Still further, respective measures of the relative states of readiness of the repairable systems are determined with the processing element in accordance. As such, the method of amended independent Claims 1 and 20 include various recitations that are performed by a particular machine, namely, a processing element which is described by the present application to be a computer specifically configured to operate under the control of the computer program product to perform the various functions set forth by Figures 2 and 3 including those recitations that are the subject of the amendments to independent Claims 1 and 20. Since independent method Claims 1 and 20 recitations that are recited to be performed by a particular machine, independent Claims 1 and 20, as amended, as well as the method claims that depend therefrom, are drawn to statutory subject matter.

For each of the foregoing reasons, the rejection of Claims 1-15 and 20-25 under 35 U.S.C. § 101 is therefore overcome.

¹ No. 2007-1130 (Fed. Cir. October 30, 2008).

Consideration Of Previously Submitted Information Disclosure Statement

It is noted that an initialed copy of the PTO Form 1449 that was submitted with Applicants' Information Disclosure Statement filed January 9, 2002 has not been returned to Applicants' representative with the Office Action. Accordingly, it is requested that an initialed copy of the Form 1449 be forwarded to the undersigned with the next communication from the PTO. In order to facilitate review of the references by the Examiner, a copy of the Information Disclosure Statement and the Form 1449 (as printed from the USPTO Image File Wrapper) are attached hereto. Copies of the cited references were provided at the time of filing the original Information Disclosure Statement, and, therefore, no additional copies of the references are submitted herewith. Applicants will be pleased to provide additional copies of the references upon the Examiner's request if it proves difficult to locate the original references.

CONCLUSION

In view of the amendments to the claims and the remarks presented above, it is respectfully submitted that the claims are in condition for allowance. It is respectfully requested that a Notice of Allowance be issued in due course. The Examiner is requested to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

The patentability of the independent claims has been argued as set forth above, and thus Applicants will not take this opportunity to argue the merits of the rejection with regard to specific dependent claims. However, Applicants do not concede that the dependent claims are not independently patentable and reserve the right to argue the patentability of dependent claims at a later date if necessary.

Appl. No.: 09/918,945
Filed: July 31, 2001
Amdt. dated 02/05/2009

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



Guy R. Gosnell
Registration No. 34,610

Customer No. 000067141

ALSTON & BIRD LLP

Bank of America Plaza

101 South Tryon Street, Suite 4000

Charlotte, NC 28280-4000

Tel Charlotte Office (704) 444-1000

Fax Charlotte Office (704) 444-1111

ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE
UNITED STATES PATENT & TRADEMARK OFFICE ON February 5, 2009 by Gwen Frickhoeffer.